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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,741	01/22/2002	Gennadiy Kitaygorodskiy		8650

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GENNADIY KITAYGORODSKIY
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Brooklyn, NY 11234

EXAMINER

RADA, ALEX P

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 09/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/051,741

Applicant(s)

KITAYGORODSKIY ET AL.

Examiner

Alex P. Rada

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Objections

1. Claim 1 is objected to because of the following informalities: In line 3, a colon should come after the word comprising. Appropriate correction is required.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1, 9 and 11, the phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 1 recites the limitation "the device" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "the device" in line 5. There is insufficient antecedent basis for this limitation in the claim

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are

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such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benge '679 in view of Garcia-Kuenzli '346.

6. Benge discloses a game simulating war fare having at least two player, who represent opposing sides, boundaries representing the edge of the battlefield, game pieces which represent figures of warriors, war animals, standards, military equipment and armaments, fortification and siege weapons, projectiles corresponding to a certain historical period, a device for measurement of displacement of units (24), a device of imitation of shooting (firing angle 62), and topographical maps (figure 1) as recited in claim 1; the models of projectiles reproduce the contours of real corresponding projectiles as recited in claim 3; the models or projectiles are tapered or equivalently sloped on both surfaces as recited in claim 4; a ratio of the thickness of the models of the projectiles to the thickness of the rest of the game pieces is larger than two as recited in claim 5. Benge does not expressly disclose a device for measurement of the area of damage delivered by projectiles and standard playing dice as recited in claim 1; the game pieces are made of paper, cardboard, or plastic and the models of projectiles are made of wood, cardboard, or plastic as recited in claim 2.

Garcia-Kuenzli teaches an equivalent of a measuring device for assessing damages delivered by projectiles, standard playing dice, and game pieces are made up of paper, cardboard, plastic or wood. By having a device for measuring damage areas by projectiles and game pieces made up of different types of materials, one of ordinary skill in the art would provide appropriate dimensions for a particular weapon used and miniature working replicas of actual weapons. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the

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applicant's invention was made to modify Benge to include a device for measurement of the area of damage delivered by projectiles, standard playing dice, and the game pieces are made of paper, cardboard, or plastic and the models of projectiles are made of wood, cardboard, or plastic as taught Garcia-Kuenzli. To do so would provide appropriate dimensions for a particular weapon used and miniature working replicas of actual weapons.

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to provide marking the edges of the battlefield by chalk or string and a device for imitation of shooting because Applicant has not disclosed that marking the edge of the battlefield, is drawn with chalk or marked with any kind of string as recited in claim 5, the device for imitation of shooting is a flat support, which has a thickness of more than ten times that of the game pieces as recited in claim 7, and has a support, which enables it to be placed at an angle to the horizontal as recited in claim 8. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with boundaries and a device for shooting imitation as taught by Benge because the boundaries surrounding the game board and the firing angle provide the same functions as designating a specific playing area and designating simulation area of a weapon being fired in a given angle and direction.

7. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benge '679 in view of Garcia-Kuenzli '346 as applied to claim 1 above, and further in view of A Fistful of TOWs 2.

8. Benge in view of Garcia-Kuenzli disclose the claimed invention as discussed above except for a device for measurement of the area of damage delivered by projectiles, has a form of

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a flat transparent sheet, made, from plastic, with a mark on it that corresponds to the initial point of reference and concentric circles having their center point at said mark, each indicating different degrees of damage delivered, which are specified for every projectile.

A Fistful of TOWs 2 (Fistful) teaches an equivalent of a device for measurement of the area of damage delivered by projectiles (Nuclear Weapons in FFT). By having a device of measuring the area damaged by a projectile, one of ordinary skill in the art would provide accurate measurements of a damaged area. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention was made to modify Benge/Garcia-Kuenzli to include a device for measurement of the area of damage delivered by projectiles as taught by Fistful. To do so would provide accurate measurements of a damaged area.

9. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benge '679 in view of Garcia-Kuenzli '346 as applied to claim 1 above, and further in view Yoder '568.

10. Benge in view of Garcia-Kuenzli disclose the claimed invention as discussed above except for a device for measurement of displacement of units is in the form of a ruler with marks, made according with greatest distances different units can move per turn.

Yoder teaches a device for measurement of displacement of units in the form of a ruler with marks. By having a measuring device in the form of a ruler, one of ordinary skill in the art would provide accurate placement of a game piece(s) on the gaming area. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention was made to modify Benge/Garcia-Kuenzli to include a device for measurement of displacement of units is in the form of a ruler with marks, made according with greatest distances different units

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can move per turn as taught by Yoder. To do so would provide accurate placement of a game piece(s) on the gaming area.

Allowable Subject Matter

11. Claim 11¹⁹ would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

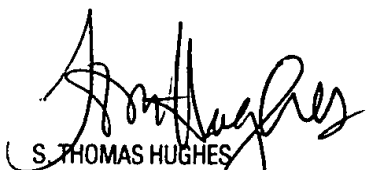
Baca '005, Peterson '411, Upton '944, Somerville '044, Keyko '504, Szatrow '303, and Anderson '973 all discloses different types of simulation type battle games.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex P. Rada whose telephone number is 703-308-7135. The examiner can normally be reached on Monday - Friday, 08:00-16:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

APR
apr


S. THOMAS HUGHES
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